EXHIBIT Q

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SOUTHERN COALITION
for SOCIAL JUSTICE

North Carolina General Assembly
2011 Redistricting Public Hearing
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On Behalf of AFRAM – the Alliance for Fair Redistricting and Minority Voting Rights

Mr. Chairmen and Members of the North Carolina General Assembly:

Today I am speaking on behalf of the Alliance for Fair Redistricting and Minority Voting Rights, a coalition of non-profit, non-partisan organizations in North Carolina. As a part of that Alliance, my organization, the Southern Coalition for Social Justice, worked with other AFRAM members to involve the community in statewide redistricting. We held redistricting workshops where we invited members of the public to come in and work directly with our demographer to examine redistricting plan options for the State Senate and State House districts. We then posted the draft maps on a website and invited further public comment.

What I am submitting today are the district plans that resulted from that process. To be clear, AFRAM is not advocating for the adoption of these plans at this time. There may be better configurations, additional input and further refinements to these plans before AFRAM formally endorses a particular plan. However, we submit these complete plans for your consideration because these plans comply with the Voting Rights Act, comply with the *Stephenson* criteria, create geographically compact districts, and recognize important communities of interest. More specifically, the plans were drawn following these criteria:

1. Comply with the federal constitutional one-person, one-vote requirement as refined by the *Stephenson* court to require no more than a plus or minus 5% deviation from the ideal district size for each district.
2. Comply with the non-retrogression criteria for districts in counties covered by Section 5 of the Voting Rights Act.
3. Comply with Section 2 of the Voting Rights Act in Mecklenburg, Forsyth and Wake Counties.
4. Comply with the State Constitutional whole county provision as specified in the *Stephenson* opinions.
5. Draw geographically compact and contiguous districts.
6. Recognize communities of interest.
7. Preserve the cores of existing districts.
8. Avoid pairing incumbents to the extent possible.
9. Avoid splitting precincts to the extent possible.

In addition to the district maps and population data, we can provide shapefiles electronically. I am also submitting today reports that show which districts we considered to be Section 2 VRA Districts and which districts are Section 5 VRA districts, with the Black voting age population of each district in the current districts and in our proposed districts. We identify the county cluster groupings mandated by *Stephenson* that we followed in each plan. Finally, we identify the incumbent pairings that were unavoidable given the population shifts reflected in the 2010 census and the need to comply with the other redistricting criteria identified above.

Again, on behalf of AFRAM, we have the following comment on the Voting Rights Act districts that the committee has made public.

It is impossible to analyze fully the impact of these districts on minority voters in North Carolina in isolation. We cannot assess the impact of a partial plan. We need to know the composition of all of the districts in the plan in order to understand the implications of the interests of minority voters.

With that caveat, however, it does appear that these districts go beyond what the Voting Rights Act requires both in terms of the number of majority-minority districts and in terms of the Black population percentages in the Voting Rights Act districts. These districts appear to be premised on at least three fundamental legal errors.

First, the Committee states their central goal is to achieve proportional representation for Black voters. However, Section 2 of the Voting Rights Act explicitly states that it is not a guarantee of proportional representation. The Act states: "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 42 U.S.C. § 1973 (2010). Thus, achieving proportional representation for a protected racial group is not required by the Voting Rights Act.

Second, the theory that the Voting Rights Act requires the drawing of a "max black" plan that creates a majority black district where ever possible was explicitly rejected by the U.S. Supreme Court in the *Miller v. Johnson* case, where the court explained:

> The Justice Department refused to preclear both of Georgia's first two submitted redistricting plans. The District Court found that the Justice Department had adopted a "black-maximization" policy under § 5, and that it was clear from its objection letters that the Department would not grant preclearance until the State ... created a third majority-black district. 864 F. Supp., at 1366, 1380. It is, therefore, safe to say that the congressional plan enacted in the end was required in order to obtain preclearance. It does not follow, however, that the plan was required by the substantive provisions of the Act.

Miller v. Johnson, 515 U.S. 900, 921 (1995).

The Supreme Court went on to explain why the Voting Rights Act does not require "maximization" by stating:

> Based on this historical understanding, we recognized in *Beer* that "the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." 425 U. S., at 141. The Justice Department's maximization policy seems quite far removed from this purpose. We are especially reluctant to conclude that § 5 justifies that policy given the serious constitutional concerns it raises.

Id., 515 U.S. at 926.

Indeed, by following a maximization policy, these districts threaten the very principles that the Voting Rights Act exists to promote. The goal of the Act is to ensure a fair opportunity to participate, not a guarantee of racial proportionality. By drawing districts that go far beyond what the Voting Rights Act requires, the General Assembly frustrates the purpose of the Act and creates a threat to its constitutionality.

Third, the purported justification for these districts is based on a crucial legal error: conflating the standards under Section 2 and Section 5 of the Voting Rights Act. The Section 5 non-retrogression requirement prevents the drawing of districts that, compared to the benchmark of existing districts, makes it harder for Black voters to elect their candidates of choice. It does not mean that Section 5 districts must be 50% or greater in Black population. A district that has a Black voting age population of 45% and has been electing the candidate of choice of Black voters, need only be redrawn to meet the benchmark of 45%. Instead, this plan appears to be based on the assumption that the Section 2 standards also apply under Section 5. The Supreme Court explicitly rejected this proposition in the *Bossier Parish* case, and has been very clear on numerous occasions since then that the standards under these two sections of the Act are different. *See Reno v. Bossier Parish,* 520 U.S. 471, 476-480 (1997). Most recently in *Bartlett v. Strickland* the court explained:

> Petitioners claim the majority-minority rule is inconsistent with §5, but we rejected a similar argument in LULAC, 548 U. S. 399, 446 (2006) (opinion of Kennedy, J.). The inquiries under §§2 and 5 are different. Section 2 concerns minority groups' opportunity "to elect representatives of their choice," 42 U. S. C. §1973(b) (2000 ed.), while the more stringent §5 asks whether a change has the purpose or effect of "denying or abridging the right to vote," §1973c.

Bartlett v. Strickland, 129 S. Ct. 1231 (2009) (citing *LULAC v. Perry,* 548 U.S. 399, 446 (2006)).

By conflating the Section 2 and Section 5 standards, the plan exceeds what the Voting Rights Act requires and, in particular, increases the percentage of Black voters in Section 5 districts beyond what is required by the non-retrogression standard.

Finally, this plan is not in the best interests of racial minority voters in North Carolina because it concentrates their voting strength in a smaller number of districts and does not balance the goals of minority representation with the goals of reflecting important communities of interest.

I look forward to having the opportunity to comment on other matters relating to Section 2 and Section 5 compliance once the full districting plans are made public.

Thank you again for the kind invitation to provide this information.